

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231*MJ*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/287,031 04/06/99 SKIENA

S 8009-7

LM02/0316

EXAMINER

FRANK CHAU ESQ
F CHAU & ASSOCIATES LLP
SUITE 501
1900 HEMPSTEAD TURNPIKE
EAST MEADOW NY 11554

EDOUARD, P

ART UNIT

PAPER NUMBER

2747

DATE MAILED:

03/16/00

S

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/287,031	Applicant SKIENA ET AL
Examiner Patrick N. Edouard	Group Art Unit 2747

Responsive to communication(s) filed on _____

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

Claim(s) 1-20 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

Art Unit: 2747

DETAILED ACTION

1. This is a first Office Action in response to application filed on 04/06/99 in which claims 1-20 are presented for examination . Claims 1-20 are pending in the application.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1-20 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 of prior U.S. Patent No. 5,960,385. This is a double patenting rejection.

4. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

Art Unit: 2747

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 305-9508 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA.,
Sixth Floor (Receptionist).

5. Any inquiry concerning this communication or earlier communications from the examiner
should be directed to Patrick N. Edouard whose telephone number is (703) 308-6725. The
examiner can normally be reached on Tuesday-Friday from 07:30 a.m.-6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,
Forester W. Isen , can be reached on (703) 30305-4386.

The facsimile phone number for this Art Unit is (703) 305-9508. Alternatively, facsimile
messages may be sent directly to (703) 305-9644 where they will be stored in the examiner's voice
mailbox (telling the examiner that a fax was received) and be automatically printed (i.e. - no delay
by the examiner).

Any inquiry of a general nature or relating to the status of this application should be
directed to the Group receptionist whose telephone number is (703) 305-3900.

Patrick N. Edouard

February 16, 2000



PATRICK N. EDOUARD
PATENT EXAMINER